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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Chapter I
Introduction

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 66/101 and met at United Nations Headquarters from 21 to 28 February and on 1 March 2012.

2. In accordance with paragraph 5 of General Assembly resolution 50/52, the Special Committee was open to all States Members of the United Nations.

3. The Special Committee held four meetings: the 264th, on 21 February, the 265th, on 24 February, and the 266th and 267th, on 1 March. The Working Group of the Whole, established at the 264th meeting, held four meetings, on 22, 24 and 27 February and on 1 March.

4. The session was opened by María Rubiales de Chamorro (Nicaragua), in her capacity as Chair of the previous session of the Special Committee.

5. At its 264th meeting, on 21 February, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981 (A/36/33, para. 7), elected the following members of its Bureau:

Chair:
Garen Nazarian (Armenia)

Vice-Chairs:
Pham Vinh Quang (Viet Nam)
Ibrahim Salem (Egypt)

Rapporteur:
Juan Manuel Sánchez Contreras (Mexico)

6. At its 265th meeting, on 24 February, the Special Committee elected the following member of its Bureau:

Vice-Chair:
Hilding Lundkvist (Sweden)

7. The Bureau of the Special Committee also served as the Bureau of the Working Group of the Whole.

8. The Director of the Codification Division of the Office of Legal Affairs, Václav Mikulka, acted as Secretary of the Special Committee. The Deputy Director of the Division, George Korontzis, acted as Deputy Secretary of the Special Committee and Secretary of the Working Group of the Whole. The Division provided substantive services for the Special Committee and the Working Group.

9. At its 264th meeting, the Special Committee adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Organization of work.

5. Consideration of the questions referred to in General Assembly resolution 66/101 of 9 December 2011, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

10. General statements touching on all or several items were made at the 264th and 265th meetings. The substance of those general statements is reflected in the relevant sections of the present report.

11. With regard to the question of the maintenance of international peace and security, the Special Committee had before it all of the related reports of the Secretary-General,[1] including the most recent report, entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions",[2] and the 1998 report on the matter containing a summary of the deliberations and main findings of the ad hoc expert group meeting convened pursuant to paragraph 4 of General Assembly resolution 52/162;[3] and a revised working paper submitted by Libya at the 2002 session on the strengthening of certain principles concerning the impact and application of sanctions.[4]

12. Also with regard to the question of the maintenance of international peace and security, the Special Committee had before it a revised proposal submitted at the 1998 session by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security;[5] a working paper[6] submitted by the Bolivarian Republic of Venezuela during the 2011 session containing a further revised version of the proposal submitted by the same delegation at the 2010 session, entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs";[7] and a revised working paper submitted by Belarus and the Russian Federation at the 2005 session containing a revised version of a General Assembly draft resolution.[8] The Special Committee also had before it a working paper

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[1] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320, A/61/304, A/62/206 and Corr.1, A/63/224, A/64/225 and A/65/217.

[2] A/66/213.

[3] A/53/312.

[4] A/AC.182/L.110/Rev.1; see A/57/33, para. 89. The working paper constituted a revision of the proposal submitted by Libya during the Committee's 2001 session (A/AC.182/L.110 and Corr.1; see A/56/33, para. 116).

[5] See A/53/33, para. 98.

[6] A/AC.182/L.130, as further revised by the sponsor delegation. See A/66/33, annex.

[7] See A/65/33, annex.

[8] See A/60/33, para. 56. During the Committee's 1999 session, Belarus and the Russian Federation submitted a working paper containing a General Assembly draft resolution (A/AC.182/L.104) in which it was recommended that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. At the same session, following discussions, the sponsors submitted a revised version of the draft resolution for future consideration (A/AC.182/L.104/Rev.1; see A/54/33, paras. 89-101). A further revised version was submitted at the 2001 session (A/AC.182/L.104/Rev.2; see A/56/33, para. 178).

submitted by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations.[9]

13. With regard to the question of the peaceful settlement of disputes, the Special Committee had before it a draft recommendation proposed by the Philippines concerning the commemoration of the thirtieth anniversary of the adoption in 1982 of the Manila Declaration on the Peaceful Settlement of International Disputes.[10]

14. At its 267th meeting, on 1 March 2012, the Special Committee adopted its report on its 2012 session.

[9] A/AC.182/L.133, reproduced in the annex to the present report.

[10] A/AC.182/L.132.

Chapter II
Maintenance of international peace and security

A. Implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions

15. The Special Committee considered the question of the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions during the general exchange of views held at its 264th meeting, on 21 February 2012, and at the 1st meeting of the Working Group of the Whole.

16. At its 1st meeting, the Working Group was briefed by representatives of the Department of Political Affairs and the Department of Economic and Social Affairs on developments relating to paragraph 11 of the report of the Secretary-General on this question (A/66/213), as requested by the General Assembly in paragraph 14 of resolution 66/101. The statements were circulated.

17. Several delegations reaffirmed that sanctions, applied in accordance with the Charter of the United Nations, remained an important instrument for the maintenance and restoration of international peace and security.

18. Concern was expressed over the imposition of unilateral sanctions in violation of international law and the right to development.

19. Some delegations noted that none of the sanctions committees had been approached by Member States since 2003 with regard to special economic problems arising from the implementation of sanctions, as confirmed in the above-mentioned report of the Secretary-General. They also noted that neither the General Assembly nor the Economic and Social Council had found it necessary in 2011 to take any action relating to that matter. On those grounds, they expressed the view that the question of assistance to third States affected by the application of sanctions was no longer relevant, should not be a matter of priority for the Special Committee and did not merit further discussion.

20. According to other delegations, the issue of assistance to third States affected by the application of sanctions, and proposals submitted on that matter, should be considered by the Special Committee on a priority basis. The view was expressed that the fact that no State had required assistance in the matter should not imply that the subject no longer merited discussion. The view was also expressed that the report of the Informal Working Group of the Security Council on General Issues of Sanctions (see S/2006/997, annex), while setting out recommendations and best practices with regard to improved sanctions design and monitoring, did not contain any recommendations that explicitly referred to ways in which to assist third States affected by the unintended impact of sanctions.

21. The view was expressed that the issue of establishing a mechanism for evaluating the effects of sanctions on third States and for assisting affected States merited consideration. It was stated that the Security Council should continue to pay attention to the humanitarian effects of sanctions before applying them and to the humanitarian needs of civilians in States targeted by sanctions.

B. Revised working paper submitted by Libya on the strengthening of certain principles concerning the impact and the application of sanctions

22. The revised working paper submitted by Libya on the strengthening of certain principles concerning the impact and the application of sanctions, contained in the 2002 report of the Special Committee (see A/57/33, para. 89), was referred to during the general exchange of views held at the 264th meeting of the Special Committee, on 21 February 2012, and was considered at the 1st meeting of the Working Group of the Whole.

23. Several delegations emphasized that sanctions should be introduced and applied in conformity with the provisions of the Charter of the United Nations and international law. It was noted that sanctions should be imposed only as a last resort when there existed a threat to international peace and security, a breach of peace or an act of aggression. Several delegations expressed the view that the objectives of sanctions regimes should be clearly defined, based on tenable legal grounds and imposed for a specific time frame. Several delegations referred to the document entitled "Introduction and implementation of sanctions imposed by the United Nations", annexed to General Assembly resolution 64/115.

24. Many delegations stated that the issue of Security Council-imposed sanctions continued to be of serious concern. They maintained that sanctions were blunt instruments whose use raised fundamental ethical questions as to whether suffering inflicted on vulnerable groups in the target country was a legitimate means of exerting political pressure. They also stated that sanctions were not applicable as a preventive measure in any and all instances of the violation of international law, norms or standards.

25. Several delegations stated that the sanctions regimes adopted by the Security Council in recent years had clearly demonstrated that sanctions could be instituted in a targeted way to minimize the possibility of adverse consequences for civilian populations as well as third parties.

26. Support was expressed for the provision of possible payment of compensation to targeted and/or third States for damage caused by sanctions found to have been unlawfully imposed. It was suggested that the International Law Commission should give due consideration, in the context of its work on the responsibility of international organizations, to the legal consequences of sanctions arbitrarily imposed against Member States by the Security Council.

27. At the 1st meeting of the Working Group of the Whole, the sponsor withdrew its proposal in the light of the fact that its objectives had largely been met.

C. Revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security

28. The revised proposal submitted by Libya with a view to strengthening the role of the United Nations in the maintenance of international peace and security (see A/53/33, para. 98) was referred to in general terms during the exchange of views

held at the 264th meeting of the Special Committee, on 21 February 2012, and was considered at the 1st meeting of the Working Group of the Whole.

29. During the general exchange of views, the hope was expressed that ongoing negotiations on the question of equitable representation within the Security Council would lead to the expansion of its membership and would be accompanied by reform of the Council's working methods, so as to ensure transparency, accountability and the participation of concerned States.

30. In the Working Group of the Whole, the sponsor delegation noted that aspects of its proposal had been dealt with elsewhere in the Organization, and accordingly indicated that while it did not insist on further discussion of the proposal, it nonetheless would not oppose its continued consideration should other delegations wish to do so at some point in the future.

D. Consideration of the further revised working paper submitted by the Bolivarian Republic of Venezuela entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs"

31. The further revised working paper entitled "Open-ended working group to study the proper implementation of the Charter of the United Nations with respect to the functional relationship of its organs" (see A/66/33, annex), submitted by the Bolivarian Republic of Venezuela at the 2011 session of the Special Committee, was referred to during the general exchange of views held at its 264th meeting, on 21 February 2012, and was considered at the 1st meeting of the Working Group of the Whole.

32. In their general comments, several delegations expressed concern at the fact that the Security Council had encroached on the functions and powers of the General Assembly and those of the Economic and Social Council by addressing issues that fell within the competence of the latter organs, including norm-setting. It was emphasized that the reform of the Organization should be carried out in accordance with the principles and procedures established by the Charter of the United Nations.

33. The representative of the sponsor delegation recalled that the proposal was aimed at strengthening the Organization by encouraging the implementation of the provisions of the Charter pertaining to the functional relationship of its organs.

34. Some delegations expressed support for the proposal and maintained that the Special Committee was the proper forum in which to consider it.

35. The view was also expressed that the responsibilities of the principal organs of the United Nations were amply defined in the Charter.

36. Some delegations preferred to be given more time to study the proposal and for bilateral discussions with the sponsor delegation.

E. Consideration of the revised working paper submitted by Belarus and the Russian Federation

37. During the general exchange of views at the 264th meeting of the Special Committee, on 21 February 2012, and at the 1st meeting of the Working Group of the Whole, the Special Committee considered the revised working paper submitted by Belarus and the Russian Federation at the 2005 session of the Special Committee (see A/60/33, para. 56), in which it was recommended, inter alia, that an advisory opinion be requested from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence.

38. The co-sponsors of the proposal stressed the continued relevance of the subject matter of the above-mentioned revised working paper and its value in providing a common understanding of the legal consequences of the resort to the use of force by States without prior authorization by the Security Council. While highlighting the importance of the issue of the lawful use of force, the co-sponsors reiterated the view that the advisory opinion of the Court could address lacunae in the Charter of the United Nations, which does not contain detailed provisions regarding the use of force, especially in the light of the contemporary international political situation. The co-sponsors favoured retaining the proposal on the agenda of the Special Committee and holding a substantive discussion on the issue.

39. Some representatives reiterated their support for the proposal. It was pointed out that the proposal would contribute to the clarification of the legal principles of the use of force in accordance with the Charter. The view was also expressed that the proposal would contribute to the strengthening of the principle of the non-use of force or the threat of force as set out in the Charter.

40. The view was expressed that the proposal could not be supported since the issue of the use of force was adequately and clearly addressed in the relevant provisions of the Charter.

41. At its 266th meeting, on 1 March 2012, the Special Committee decided to keep the proposal under the agenda item entitled "Maintenance of international peace and security".

F. Introduction by Cuba of a working paper on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations

42. During the 1st meeting of the Working Group of the Whole, the delegation of Cuba orally introduced a proposal entitled "Strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations" and informed delegations of its intention to submit a working paper in that regard.

43. The delegation of Cuba stated that the proposal was based on the revised proposal submitted by Cuba at the 2009 session of the Special Committee (A/AC.182/L.93/Rev.1, reproduced in A/64/33, para. 32), with some changes. The delegation highlighted that, most important, the document was aimed at the adoption of direct recommendations to strengthen the work of the General Assembly.

44. The sponsor delegation informed the Working Group of its intention to substantively discuss the proposal during the next session of the Special Committee, since it understood that delegations would need time to consult with their capitals.

45. Some delegations conveyed their support for the intention of the Cuban delegation to substantively discuss its proposal during the next session of the Special Committee. Other delegations expressed their need for more time to reflect on the proposal.

46. Other delegations stated that if the proposal was similar to the revised proposal submitted in 2009, it should be recalled that in 2011 the Special Committee had decided not to adopt that proposal. In this regard, the Cuban delegation explained its view that in 2011, the proposal had been adopted by the Working Group of the Whole but the recommendation that it be submitted for consideration by the General Assembly had not been adopted by the Special Committee.

47. At the 3rd meeting of the Working Group of the Whole, the Chair of the Working Group informed delegations that Cuba had submitted the above-mentioned working paper, which had been issued as document A/AC.182/L.133.

48. At its 266th meeting, on 1 March 2012, at the request of the sponsor delegation, the Special Committee decided to annex the working paper to its report. It was noted that the working paper had not been considered during the session.

Chapter III
Peaceful settlement of disputes

49. The Special Committee considered the item entitled "Peaceful settlement of disputes" during the general exchange of views at its 264th and 265th meetings, on 21 and 24 February 2012, and at the 2nd and 4th meetings of the Working Group of the Whole.

50. During the general exchange of views, several delegations reiterated that in accordance with the mandate of the Special Committee, the question of the peaceful settlement of disputes should remain on its agenda. The importance of a free choice of means in peaceful dispute settlement was emphasized. The role of the International Court of Justice as the principal judicial organ of the United Nations was highlighted.

51. The thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes, which had been approved by the General Assembly in 1982 and annexed to its resolution 37/10, was recalled. Recognition of and appreciation for the important role that the Special Committee had played in its formulation were expressed. Many delegations stated that it remained an important document produced by the Special Committee. It was pointed out that this was the first time that a text had reflected the development of a comprehensive plan and the consolidation of a legal framework for the peaceful settlement of international disputes, thus making a significant contribution within this field. It was stated that the Charter of the United Nations had provided the basic legal framework. The importance of other relevant General Assembly resolutions was also emphasized.

52. At the 2nd meeting of the Working Group of the Whole, the representative of the Philippines introduced a proposal for a recommendation on the thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes (A/AC.182/L.132).

53. The representative of the Philippines, as sponsor of the proposal, suggested that the topic as presented in the Manila Declaration remained relevant and represented a clear demonstration of the potential of the Special Committee and of the significance of its work. The sponsor stated that the commemoration of the thirtieth anniversary would serve to remind Member States of their obligation to settle disputes by peaceful means and of the contribution made by the Declaration to the development of international law.

54. Several delegations supported the proposal to recommend the commemoration of the Manila Declaration. Some delegations expressed the need to further study the draft recommendation. Several delegations also expressed their readiness to work on the drafting of the recommendation in consultation with the sponsor. The concern was expressed that the draft recommendation attempted to interpret the Charter of the United Nations.

55. Open informal consultations were conducted by the Philippines for further discussion of the draft recommendation.

56. At the 4th meeting of the Working Group of the Whole, the representative of the Philippines orally reported on the outcome of the informal consultations on the proposal.

57. The Special Committee recommends the following draft resolution for the consideration of the General Assembly with a view to its adoption:

Thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes

The General Assembly,

Acknowledging that 15 November 2012 will mark the thirtieth anniversary of the Manila Declaration on the Peaceful Settlement of International Disputes, as approved by the General Assembly, without a vote, on 15 November 1982 in its resolution 37/10,

Recalling that the Manila Declaration was negotiated on the initiative of Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia and on the basis of a text prepared by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization,

Recalling also that the Manila Declaration was the first instrument adopted by the General Assembly as a result of the work of the Special Committee,

Recalling further that the Manila Declaration is a landmark declaration on the peaceful settlement of international disputes, building upon the Charter of the United Nations, in particular its Article 33,

Recalling that the International Court of Justice is the principal judicial organ of the United Nations,

1. *Recognizes* the Manila Declaration on the Peaceful Settlement of International Disputes as a concrete accomplishment of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and welcomes the thirtieth anniversary of the adoption of the Declaration;

2. *Reiterates* its call to all States to observe and promote in good faith the Manila Declaration in the peaceful settlement of their international disputes;

3. *Encourages* all Member States to commemorate the thirtieth anniversary of the adoption of the Manila Declaration through appropriate activities.

58. At the 2nd meeting of the Working Group of the Whole, the representative of Cuba stated that he was undertaking informal bilateral consultations with a number of delegations as to the possibility of considering, in the Special Committee, the question of referrals of situations to the International Criminal Court by the Security Council, as provided for in article 13 of the Rome Statute of the International Criminal Court, with the objective of establishing clear rules that did not allow for double standards.

59. While some delegations expressed the view that the discussion of this issue by the Special Committee might be useful, other delegations stated that its examination was inappropriate for the Special Committee, had no practical utility and thus would not be a good use of the Special Committee's resources.

Chapter IV

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

60. During the general exchange of views at the 264th meeting of the Special Committee, on 21 February 2012, and at the 2nd meeting of the Working Group of the Whole, delegations commended the ongoing efforts of the Secretariat to update the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and to eliminate the backlog in the preparation of those publications. The continued efforts to make both publications available on the Internet were also welcomed, especially as that would promote their wider dissemination, particularly in developing countries. The significance of the two publications as research tools for the international community and their importance in the preservation of the institutional memory of the Organization were recalled. The hope was expressed that the publications would be published on the United Nations website in all official languages of the United Nations.

61. Several delegations emphasized the necessity of eliminating the backlog with respect to volume III of the *Repertory*.

62. Several delegations expressed appreciation to the Member States that had contributed to the two trust funds established for the *Repertory* and the *Repertoire*, which had facilitated the progress in the elimination of the backlog with regard to those publications, and encouraged Member States to make additional contributions. Some delegations noted that the continuing and new partnerships with academic institutions had made positive contributions in terms of updating the publications.

63. The view was expressed that the modalities set out in the report of the Secretary-General of 18 September 1952 (A/2170) should be strictly followed in the preparation of studies for the *Repertoire of the Practice of the Security Council*.

64. At its 2nd meeting, the Working Group was briefed by a representative of the Secretariat on the status of the preparation of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

65. Concerning the *Repertory*, it was reported that further progress had been made in the preparation of studies pertaining to volume III, Supplements 7, 8 and 9 (1985-1999), during the past four months. The Security Council Affairs Division of the Department of Political Affairs had prepared a number of studies for that volume, which had been placed on the United Nations website for the *Repertory*. A number of studies for Supplement 10, covering the period from 2000 to 2009, had been completed and placed on the *Repertory* website. Work had begun on studies on several other Articles for Supplement 10. In October 2011, volume IV of Supplement 7 had been published in Spanish. Work was continuing on the translation and publication of other volumes.

66. The partnership with Columbia Law School had continued for the ninth consecutive year, resulting in the preparation of 11 studies and 2 ongoing studies. The cooperation with the University of Ottawa had also continued, with students working on 6 studies for volume VI. Cooperation with academia had been extended to include students from Fordham University School of Law and Concord Law School. The Secretariat was also assisted by the work of interns.

67. Since the establishment of the trust fund in 2005, more than $100,000 had been donated. After the use of part of the funds for the preparation of the *Repertory* studies, approximately $47,000 remained available in the trust fund.

68. With regard to the *Repertoire*, it was pointed out that in the past year, the Security Council Practices and Charter Research Branch of the Security Council Affairs Division had worked on Supplements 15 and 16, covering the period from 2004 to 2009, and had laid the groundwork for Supplement 17, which would cover the years 2010 and 2011. The entire volume of Supplement 15, covering the period from 2004 to 2007, had been completed and made available electronically in its advance version on the *Repertoire* website. Work on Supplement 16, covering the years 2008 and 2009, was expected to be completed in April 2012. Progress in the work on Supplement 17 and future supplements would depend on the availability of resources. The *Repertoire* website was to be available in all official languages in the coming months.

69. Following the briefings, concern was expressed regarding the remaining backlog in the preparation of volume III of the *Repertory* and a question was asked regarding the utilization of the assistance of academic institutions in its preparation.

70. In response to that question, the representative of the Secretariat recalled that detailed information on the progress that had been made in the preparation of volume III of the *Repertory* was contained in paragraph 3 of the text of a statement on the status of the *Repertory* that had been distributed in the conference room. The representative also stated that, with regard to those particular studies, the overlap of the *Repertory* and the *Repertoire* meant that they were to be prepared by the Security Council Practices and Charter Research Branch, with cross-references within the *Repertory* to the *Repertoire*. Those studies were to be prepared without the assistance of academic institutions.

71. The Special Committee recommends that the General Assembly:

(a) Commend the Secretary-General for the progress made in the preparation of studies for the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

(b) Note with appreciation the contributions made by Member States to the trust fund for the elimination of the backlog in the *Repertory*, as well as the trust fund for the updating of the *Repertoire*;

(c) Reiterate its call for voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory of Practice of United Nations Organs* so as to further support the Secretariat in carrying out the effective elimination of that backlog; voluntary contributions to the trust fund for the updating of the *Repertoire of the Practice of the Security Council*; and the sponsoring, on a voluntary basis and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

(d) Call upon the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions;

(e) Note with concern that the backlog in the preparation of volume III of the *Repertory of Practice of United Nations Organs* has not been eliminated, and call upon the Secretary-General to address that issue effectively and on a priority basis, while commending the Secretary-General for some progress made in reducing the backlog;

(f) Reiterate the responsibility of the Secretary-General for the quality of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and, with regard to the *Repertoire*, call upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952.

Chapter V

Working methods of the Special Committee and identification of new subjects

A. Working methods of the Special Committee

72. The issue of the working methods of the Special Committee was addressed by several delegations during the general exchange of views at the 264th and 265th meetings of the Special Committee, on 21 and 24 February 2012, and was considered at the 3rd meeting of the Working Group of the Whole.

73. Several delegations continued to urge that the Special Committee consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation, as reflected in paragraph 3 (e) of resolution 66/101, and to fully implementing the working methods adopted in 2006. The view was expressed that a review of the working methods adopted in 2006 should be included in the agenda of the Special Committee session of 2013. Several delegations also urged States to explore ways and means of achieving a better use of resources and of the meetings of the Special Committee by reviewing all its existing agenda items, looking into the usefulness of further discussing them, and taking into account their continued relevance and the likelihood of reaching a consensus. The need to avoid duplication of the work of other bodies of the United Nations was also stressed. In addition, it was suggested that recommendations of the Special Committee be drafted in such a way as to ensure that they were self-contained and operational, rather than including references to elements set out in previous reports or using cross-references to parts of reports that did not contain clear operational elements.

74. Several delegations suggested that the duration of the meetings of the Special Committee be re-examined in accordance with the working methods adopted in 2006. It was also suggested that the Special Committee meet biennially or shorten its sessions. Other delegations spoke in favour of maintaining the current duration of the Special Committee's sessions and convening them annually. It was also suggested that the annual session of the Special Committee be extended up to four weeks, as had been done in the past. The view was expressed that this item should remain on the agenda of the Special Committee and should be reviewed periodically.

75. Some delegations referred to the significant potential of the Special Committee as highlighted by the landmark instruments that had been produced. The view was also expressed that the Special Committee had not met its full potential mainly because its working methods did not facilitate the performance of its legal analysis function. Several delegations expressed the view that the full execution of the mandate of the Special Committee depended upon the political will of States, as well as on the full implementation and optimization of its methods of work, including the configuration of a solid thematic agenda that would allow for the optimal use of the Special Committee's resources. The view was expressed that the Special Committee's work by consensus ought not to become a form of veto. The view was also expressed that some States were blocking the consideration of proposals before the Special Committee without presenting any arguments.

76. While several delegations placed special emphasis on the continuation of the consideration of items and proposals regarding the question of the maintenance of international peace and security, the view was also expressed that certain topics should not be discussed by the Special Committee, as they were clearly addressed in the Charter of the United Nations, and therefore further elaboration by the Committee would be redundant.

B. Identification of new subjects

77. The issue of the identification of new subjects was considered during the general exchange of views held at the 264th meeting of the Special Committee, on 21 February 2012, and at the 3rd meeting of the Working Group of the Whole.

78. Several delegations recalled the new subjects proposed at previous sessions of the Special Committee and called for their meaningful consideration. Several delegations expressed the view that the Special Committee could contribute to the examination of the legal matters related to the reform and revitalization of the Organization and its organs, including issues relevant to the implementation of the Charter of the United Nations and to the roles and prerogatives of the General Assembly and the Security Council.

79. The view was presented that, without the express mandate of the General Assembly, the Special Committee should not consider any new proposals which might envisage amendments to the Charter and that any such amendments should be considered in the overall context of the reform of the Organization.

80. The view was also expressed that sovereign States had the right to present relevant new proposals for the Special Committee's consideration in accordance with its mandate and that not allowing the Special Committee to consider such proposals while, at the same time, criticizing it for a lack of results was not acceptable.

81. Some delegations expressed support for the proposal for the inclusion of a new item, presented by Ghana at the 2010 session, entitled "Principles and practical measures/mechanisms for strengthening and ensuring more effective cooperation between the United Nations and regional organizations on the matters relating to maintenance of international peace and security in areas of conflict prevention and resolution and post-conflict peacebuilding and peacekeeping, consistent with Chapter VIII of the Charter of the United Nations". While the view was expressed that that was a topic that could benefit from in-depth discussion and analysis in the Committee, the view was also expressed that the proposal would not result in a constructive use of the Committee's time given the extensive work done on the subject in other forums within the United Nations.

Annex

Working paper by Cuba on the strengthening of the role of the Organization and enhancing its effectiveness: adoption of recommendations[a]

In accordance with its mandate as set forth in General Assembly resolution 3499 (XXX), of 15 December 1975, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must be directly involved in the restructuring exercise that is being conducted in the United Nations in response to the growing recognition of the need for a comprehensive reform of the principal organs of the Organization.

The need to achieve the delicate balance envisaged in the Charter between the mandates of all the principal organs, and, in particular, between the mandate of the General Assembly and that of the Security Council, and the need to reform the Security Council in order to make it more representative, more transparent and more democratic in its operations, impose on the Special Committee specific tasks in fulfilment of its mandate.

These tasks are increasingly dictated by the persistence of international tensions that threaten international peace and security; the need for the full application of the principles of sovereign equality and equitable geographical representation based on the Organization's universal make-up; the increase in the Organization's membership; and the recognition that the United Nations remains a preferred alternative for Member States.

The political will of States to comply with the instruments and treaties adopted by the Organization is also a solid and necessary foundation for genuine and lasting peace.

Accordingly, the Special Committee has the important task of contributing actively to the efforts under way in the various open-ended working groups of the General Assembly by providing a legal analysis, from a juridical perspective, of fundamental issues involved in the reform process, including:

- The role of the General Assembly in the maintenance of international peace and security.

On the basis of the foregoing, the Special Committee should perform the following tasks:

(a) Conduct a legal study on the implementation of Chapter IV of the Charter, specifically its Articles 10, 11, 12, 13 and 14 dealing with the functions and powers of the General Assembly:

- Study, in the light of the reform process, the validity in the present circumstances of the general exception contained in Article 12, paragraph 1, of the Charter with respect to recommendations by the General Assembly regarding a dispute that is being considered by the Security Council in

[a] A/AC.182/L.133. Based on document A/AC.182/L.93/Rev.1, recommended during the 2011 session by the Working Group of the Whole to the Special Committee (see A/66/33).

exercising the functions assigned to it under the Charter, and the relationship between that paragraph and Articles 10, 11, 13 and 14.

As demonstrated by the recent resumption of the tenth special session of the General Assembly, the objective of having the Assembly examine an issue is not to hinder but to support the efforts of the Security Council. The objective is not to strip the Security Council of its fundamental role in the maintenance of international peace and security, but to support it in fulfilling its functions.

A number of examples may be cited to show that the General Assembly has broad prerogatives and powers, many of which have never been used or fully exercised.

- Article 10 of the Charter authorizes the General Assembly to "discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter".

Since the Charter does not confer such authority on any other organ, the authority should be actively exercised by the Assembly.

Article 12, paragraph 1, of the Charter provides that the General Assembly shall not make any recommendations with regard to a dispute or situation before the Security Council.

This provision does not prevent the General Assembly from discussing any question or dispute or situation that is being considered by the Security Council, nor does it exclude the possibility that a majority of the Member States may express their opinions on questions before the Council.

- Article 11, paragraph 2, provides that "the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council".

The question may be discussed, but the Assembly may make recommendations only if the Security Council is not exercising its functions with regard to the dispute or situation.

Articles 13 and 14 indicate the purposes of the recommendations that the General Assembly may make.

The Security Council must act in consonance with the purposes and principles of the United Nations, foremost among them being to maintain international peace and security; to that end, it must take effective collective measures to prevent and eliminate threats to peace and to suppress other breaches of the peace.

The Security Council must discharge its primary responsibility under Article 24 of the Charter, and all its permanent members must seek to achieve unanimity among themselves for the purpose of taking action in the event of a situation that threatens international peace and security.

If the Members of the Organization determine or consider that the Council is not ready to act in accordance with the purposes and principles of the Organization, such a determination may ease the procedural restriction contained in Article 12, paragraph 1, of the Charter, and allow decisions of the Security Council to genuinely reflect the will of the majority of the Members of the Organization.

If the Security Council, owing to a lack of unanimity among its permanent members, ceases to discharge its primary responsibility for the maintenance of international peace and security in any situation in which there is a threat to peace, a breach of the peace or an act of aggression, the General Assembly should immediately consider the question with a view to making appropriate recommendations to the members for the adoption of collective measures.

The Special Committee on the Charter should play a more active role, from a legal viewpoint, in disputes such as that indicated above, where the Members of the United Nations might contribute to the maintenance of international peace and security.

The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization could conduct the study proposed above, either directly or through ad hoc subsidiary bodies.

Recommendations which the Special Committee on the Charter could consider and adopt for submission to the Sixth Committee

- Although the General Assembly may not make recommendations on a matter before the Security Council, it can discuss any question, dispute or situation on the Council's agenda.
- If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to members for the adoption of collective measures.[b]
- The Assembly, if not in session, may meet in emergency special session within 24 hours of the request to that effect.
- The emergency special session may be convened at the request of the Security Council or the majority of the Members of the United Nations.

[b] General Assembly resolution 377 (V), "Uniting for peace", adopted in 1950, provides that: "... if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor".

- The Special Committee on the Charter could assist in determining the meaning of the phrase "is exercising in respect of any dispute or situation the function ...", used in Article 12, paragraph 1.[c]

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[c] Statement made by the Legal Counsel at the 1637th meeting of the Third Committee on 12 December 1968: "Article 10 of the Charter of the United Nations provides that the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council on any such questions or matters. Article 12 provides that while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. Nevertheless, the Assembly has interpreted the words 'is exercising' as meaning 'is exercising at this moment'; consequently it has made recommendations on other matters which the Security Council was also considering ...".

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